LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 16 1964
JOHN F. DAVIS, CLERK

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 408

WESTERN NATURAL GAS COMPANY,
Petitioner,
VERSUS
CITIES SERVICE GAS COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Delaware

BRIEF FOR RESPONDENT CITIES SERVICE GAS COMPANY IN OPPOSITION

CONRAD C. MOUNT
DANIEL R. HOPKINS
CHARLES V. WHEELER
First National Building
Oklahoma City, Oklahoma 73101

Attorneys for Respondent,
Cities Service Gas Company

Of Counsel:
HOWARD L. WILLIAMS
MORRIS, JAMES, HITCHENS & WILLIAMS
701 Bank of Delaware Building
Wilmington, Delaware 19801

HARRY S. LITTMAN
MELVIN RICHTER
317 Wyatt Building
Washington, D. C. 20005

September, 1964

UTTE BACK TYPESETTING CO., 13 SO. WALKER, OKLAHOMA CITY, PH. CE 5-0780

INDEX

	PAGE
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statutes Involved	2
Statement of the Case	2
Argument	9
I. The judgment of the Supreme Court of Delaware remanding this case to the trial court for trial upon its merits is not a final judgment or decree within the terms of 28 U.S.C. § 1257	9
II. A state court having jurisdiction over plaintiff's suit based upon claims of right arising under state law also has jurisdiction to pass upon defenses to that suit raising Federal questions arising under the Natural Gas Act	12
III. The void Kansas Minimum Price Order did not increase the rate for natural gas sold by the defendant producer to the plaintiff pipeline company for resale in interstate commerce simply because a copy of the void order was deposited with the Federal Power Commission as a part of the defendant producer's rate filing under the Natural Gas Act	13
Conclusion	16
Appendix	i

INDEX CONTINUED PAGE

TABLE OF AUTHORITIES

CASES:

Cities Service Gas Company v. Federal Power Commission, 255 F.2d 860 (10th Cir. 1958), cert. denied sub nom. Magnolia Petroleum Co. v. Cities Service Gas Co., 358 U.S. 837 (1958) 8, 15
Cities Service Gas Co. v. State Corporation Comm'n, 355 U.S. 391 (1958) 3, 14
Cities Service Gas Co. v. United Producing Co., 212 F.Supp. 116 (1960) 15
Columbian Fuel Corporation v. Superior Court, 158 A.2d 478 (1960) 15
Gibbons v. Ogden, 6 Wheat 448 11
Gospel Army v. City of Los Angeles, 331 U.S. 543 (1947) 9
Laclede Gas Light Co. v. Missouri Public Service Commission, 304 U.S. 398 (1938) 10
Local No. 438 v. Curry, 371 U.S. 542 (1963) 10, 11
Market Street R. Co. v. Railroad Com. of Cal., 324 U.S. 548 (1945) 9
Mercantile National Bank v. Langdeau, 371 U.S. 555 (1963) 10, 11
Natural Gas Pipeline Co. of America v. Federal Power Comm'n, 253 F.2d 3 (3d Cir. 1958), cert. denied sub nom. Dorchester Corp. v. Natural Gas Pipeline Co., 357 U.S. 927 (1958) 8, 15
Natural Gas Pipeline Co. of America v. Harrington, 246 F.2d 915 (5th Cir. 1957), cert. denied 356 U.S. 957 (1958) 15
Natural Gas Pipeline Co. v. Panoma Corp., 349 U.S. 444 (1955) 14
Northern Natural Gas Co. v. Landon, 212 F.Supp. 856 (1961) 15

INDEX CONTINUED

PAGE

Pan American Petroleum Corp. v. Kansas-Nebraska Natural Gas Co., 297 F.2d 561 (8th Cir. 1962), cert. denied 370 U.S. 937 (1962) 8, 14-15

Pan American Petroleum Corp. v. Superior Court, 366 U.S. 656 (1961) 3, 4, 5, 6, 8, 10, 12-13

Phillips Petroleum Co. v. Wisconsin, 347 U.S. 672 (1954) 6

Pope v. Atlantic Coast Line R. Co., 345 U.S. 379 (1953) 9

Republic Natural Gas Co. v. State of Oklahoma, 334 U.S. 62 (1948) 9-10

Southern Pacific Co. v. Gileo, 351 U.S. 493 (1956) 10

STATUTES:

Judiciary and Judicial Procedure:

28 U.S.C. § 1257 ..... 2, 9

28 U.S.C. § 1257(3) 1

Natural Gas Act, 15 U.S.C. § 717s 5

In the
Supreme Court of the United States
OCTOBER TERM, 1964

No. 408

WESTERN NATURAL GAS COMPANY,
Petitioner,

VERSUS

CITIES SERVICE GAS COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Delaware

BRIEF FOR RESPONDENT CITIES SERVICE GAS COMPANY IN OPPOSITION

OPINIONS BELOW

The opinion of the Supreme Court of Delaware is reported at 201 A.2d 164 and is printed as Appendix B to the Petition for Writ of Certiorari, pp. 10a-22a. The opinion and judgment of the Superior Court of the State of Delaware in and for New Castle County are printed as Appendix C to the Petition for Certiorari, pp. 22a-30a.

JURISDICTION

Petitioner seeks to invoke the jurisdiction of this Court under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Is the judgment of the Supreme Court of Delaware remanding this case to the trial court for trial upon its merits a final judgment or decree within the terms of 28 U.S.C. § 1257?

2. Whether a state court having jurisdiction over plaintiff's suit based upon claims of right arising under state law also has jurisdiction to pass upon defenses to that suit raising federal questions arising under the Natural Gas Act?

3. Whether the void Kansas Minimum Price Order increased the rate for natural gas sold by defendant producer to the plaintiff pipeline company for resale in interstate commerce simply because a copy of the void order was deposited with the Federal Power Commission as a part of the defendant producer's rate filing under the Natural Gas Act?

STATUTES INVOLVED

The statute involved in the first question is 28 U.S.C. § 1257, set out in the Appendix hereto. The statutes involved in the second and third questions are cited under Statutes Involved, page 2, Petition for Writ of Certiorari, and are printed in Appendix A thereto.

STATEMENT OF THE CASE

This suit is the last of four identical actions commenced by Cities Service Gas Company (Cities) in the Superior Court of New Castle County, Delaware, to re-

cover overpayments made by Cities to four producers of natural gas in the Kansas-Hugoton Field under the mandate of the Kansas Minimum Price Order, which was held invalid by this Court in *Cities Service Gas Co.* v. *State Corporation Comm'n*, 355 U.S. 391 (1958).[1]

Three of the four producers sought and obtained a writ of certiorari in this Court to review the jurisdiction of the Delaware court, 363 U.S. 818, and this Court affirmed that jurisdiction. *Pan American Petroleum Corp.* v. *Superior Court*, 366 U.S. 656 (1961). The facts stated in that opinion are substantially identical with the facts in the case at bar.

Cities is a natural gas pipeline company. Petitioner, Western Natural Gas Company (Western), is a producer of natural gas. In September, 1949, Cities contracted with Western to purchase natural gas produced in the Hugoton Field in Kansas, at the contract price of 8¢ per Mcf (A4, A10).

On December 2, 1953, the Kansas Corporation Commission issued an Order, to take effect on January 1, 1954, fixing a minimum price of 11¢ per Mcf to be paid for all gas taken from the Field. The effect of this Order was to require Cities to pay Western the 11¢ price rather than the lower price fixed in the contract (A4-5, A10).

---

[1] The litigation with producers other than Petitioner has now been terminated, and the moneys recovered by Cities have been passed on to Cities' customers who paid an increased price on account of the void Kansas Order.

On January 21, 1954, prior to making its first payment under the Order, Cities advised Western by letter that it was prosecuting a suit for judicial review of the Order but that it would comply with the Order during the pendency of the suit. The letter advised that the payments to be tendered under the Order were to be made and to be accepted as involuntary payments. The letter concluded that if the Order was determined to be invalid, then Cities would expect Western to refund the overpayments made under the Order (A5-6, A11).

Thereafter until January 20, 1958, each monthly payment by Cities to Western was made by a voucher check which bore the notation that the payments were tendered "subject to provisions" of the January 21, 1954 letter. Western received and cashed each voucher check without objection, and retained the proceeds thereof (A6-7, A11).

On January 20, 1958, this Court held that the Kansas Minimum Price Order was invalid. *Cities Service Gas Co.* v. *State Corporation Comm'n, supra.*

Following such decision, Cities commenced this action in the Superior Court of Delaware. In all material respects, the Complaint filed in this case was identical with the complaints which are described in this Court's opinion in the *Pan American* case, 366 U.S. 656, 661 (A4-9).

Cities alleged the Gas Purchase Contract specifying the 8¢ price; the entry of the Kansas Corporation Commission's Minimum Price Order; Cities' letter of January 21, 1954; Cities' monthly voucher checks with the "subject to provisions" noted thereon; and this Court's determination

that the Kansas Order was invalid (A4-7). Based upon these allegations Cities sued for the overcharges paid to Western, on alternative theories that there was a contract to refund the overpayments and that Cities was entitled to restitution of the overpayments by which Western had been unjustly enriched under the compulsion of the invalid Kansas Order (A7-9).

Western's principal defense to the suit was based upon its status as an independent producer of natural gas under the Natural Gas Act and upon the regulation of its rates by the Federal Power Commission (A10-16).

Western contended that the trial court was without jurisdiction over the suit. Its position was that the determination as to what its filed rate was and as to whether or not it had been overpaid for gas delivered to Cities were matters within the exclusive jurisdiction of the Federal Power Commission under Section 20 of the Natural Gas Act, 15 U.S.C. 717s (A12).[2] Western also defended the suit upon the ground that by reason of the filing of a copy of the void Order along with the Contract as its rate schedule under the Natural Gas Act its rate was 11¢; that there could be no deviation from that rate and that therefore Cities was not entitled to any recovery (A10-14). The facts in this regard are as follows:

---

[2] This question was presented to this Court in *Pan American Petroleum Corp.* v. *Superior Court*, 366 U.S. 656 (1961), in which it was held that state courts have jurisdiction over suits such as these based on common-law rights even though the defense is based upon the Natural Gas Act. Western was not a party to the *Pan American* case but its case was delayed pending the determination of the jurisdictional question.

On June 7, 1954, in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954), this Court held that the Federal Power Commission had jurisdiction over sales of natural gas such as those made by Western to Cities. Under appropriate orders of the Federal Power Commission, Western filed as its rate schedule the gas purchase contract between the parties and a copy of the Kansas Minimum Price Order (A100-102). Western's rate schedule was accepted for filing by the Commission on March 5, 1955, by a letter from the Commission to Western. The Commission's letter provided specifically that acceptance of the filing should not "be construed as constituting approval of any rate, charge, classification, etc." (A90-91). The Commission also issued a Certificate of Public Convenience and Necessity authorizing Western's sale of gas to Cities. The Certificate made no reference to the price at which the sale was to be made (A31-34).

Subsequently, in an entirely separate proceeding the Federal Power Commission commenced an investigation of Western's rates under Section 5(a) of the Natural Gas Act. This investigation was dismissed by an Order of the Commission which concluded:

> "* * * Furthermore, this order . . . shall not be construed as a determination as to what the effective legal rates are or have been for jurisdictional sales by Western." (23 F.P.C. 235, 237.)

Finally, Western contends that notwithstanding this Court's decision in *Pan American Petroleum Corp.* v. *Superior Court, supra,* the Delaware courts should have refrained from trying this case. The contention is predi-

cated upon the fact that Western filed a complaint in Docket No. G-14958 with the Commission seeking a determination of its effective filed rate (A124-139). The Commission has refused to hear the matter. In its Order in said Docket No. G-14958, the Commission referred specifically to the case at bar then pending in the trial court, and concluded:

> " 'Since litigation is now pending between the parties concerning the lawful rate for the sale and purchase of gas, it is neither necessary, appropriate, nor in the public interest for the Commission at this time to undertake to determine the rates for those sales . . .' " (Opinion, p. 14a, Appendix B, Petition for Writ of Certiorari.)

In dismissing its proceeding considering rate schedules based on void minimum price orders generally, the Commission similarly stated:

> "* * * We recognize . . . that a buyer of natural gas who has paid Seller on the basis of a state minimum price law can invoke the jurisdiction of an appropriate Court in the event that his contract provides for a refund if the State minimum price laws are held invalid." (27 F.P.C. 327.)

Based upon the above facts with respect to its Natural Gas Act defenses, Western filed its Motion for Summary Judgment. Cities filed its Motion for Summary Judgment based upon its common-law theories of contract and restitution. The trial court overruled Western's Motion and sustained Cities' Motion, entering judgment for Cities in the amount sued for with interest thereon at 6 per cent per annum (A344).

Upon Western's appeal, the Supreme Court of Delaware rejected Western's Natural Gas Act defenses. It was held that this Court's decision in *Pan American Petroleum Corp.* v. *Superior Court, supra,* affirmed the jurisdiction of the trial court over the suit, and that the uniform decisions of the United States Courts of Appeals[3] supported and required the determination that Western's filed rate under the Natural Gas Act was the 8¢ contract rate, unaffected by the void Kansas Minimum Price Order (Appendix B, Petition for Writ of Certiorari).

Notwithstanding its determination that Western had received payments in excess of its filed rate, the Delaware Supreme Court held that under some circumstances Western might be entitled to retain such overpayments under the doctrine of voluntary payments under state law. Accordingly, the Court remanded the case for trial upon its merits (Appendix B, Petition for Writ of Certiorari).

---

[3] *Pan American Petroleum Corp.* v. *Kansas-Nebraska Natural Gas Co.,* 297 F.2d 561 (8th Cir. 1962), *cert. denied* 370 U.S. 937 (1962); *Natural Gas Pipeline Company of America* v. *Federal Power Commission,* 253 F.2d 3 (3d Cir. 1958), *cert. denied sub nom Dorchester Corp.* v. *Natural Gas Pipeline Co.,* 357 U.S. 927 (1958); *Cities Service Gas Co.* v. *Federal Power Commission,* 255 F.2d 860 (10th Cir. 1958), *cert. denied sub nom Magnolia Petroleum Co.* v. *Cities Service Gas Co.,* 358 U.S. 837 (1958).

ARGUMENT

I.

The judgment of the Supreme Court of Delaware remanding this case to the trial court for trial upon its merits is not a final judgment or decree within the terms of 28 U.S.C. § 1257.

This case is outside the appellate jurisdiction of this Court. 28 U.S.C. § 1257 limits this Court's authority to the review of *final* judgments of state courts. "It must be the final word of a final court." *Market Street R. Co.* v. *Railroad Com. of Cal.*, 324 U.S. 548, 551 (1945). The judgment of the Supreme Court of Delaware is not such a final judgment.

The judgment for which Petitioner seeks review reversed the trial court's order on the parties' cross-motions for summary judgment. The Delaware Supreme Court's judgment simply vacated the trial court's judgment in Cities' favor and remanded the case for trial upon its merits. The breadth of the unresolved issues to be tried upon remand are described in the Court's opinion as including the question as to the voluntary vs. involuntary nature of Cities' payments; the issue of the statute of limitations; whether or not there was a contract to refund; the amount of Cities' recovery, if any; and the question of interest (Appendix B, Petition for Writ of Certiorari).

The decisions of this Court holding that such a judgment is not a final judgment within 28 U.S.C. § 1257 are legion. Among such decisions are: *Gospel Army* v. *City of Los Angeles*, 331 U.S. 543 (1947); *Republic Natural Gas Co.* v. *State of Oklahoma*, 334 U.S. 62 (1948); *Pope* v. *At-*

lantic Coast Line R. Co., 345 U.S. 379 (1953); *Laclede Gas Light Co.* v. *Missouri Public Service Commission*, 304 U.S. 398 (1938); *Southern Pacific Co.* v. *Gileo*, 351 U.S. 493 (1956).

Petitioner suggests that the judgment in this case is final within the principles announced in *Local No. 438* v. *Curry*, 371 U.S. 542 (1963), and *Mercantile National Bank* v. *Langdeau*, 371 U.S. 555 (1963). These cases are not in point.

In *Local No. 438* this Court reviewed the authority of the trial court to entertain the suit against a challenge of its jurisdiction. In *Mercantile National Bank* this Court reviewed the authority of the trial court to entertain the suit against a challenge of its venue. This is not the question presented here.

The authority of the trial court to entertain this action has been finally decided in *Pan American Petroleum Corp.* v. *Superior Court*, 366 U.S. 656 (1961). In that case this Court held that the Superior Court of Delaware had jurisdiction over suits based upon common-law claims founded in state law. The complaints considered in *Pan American* are identical with the complaints in the case at bar. Moreover, this Court made it crystal clear that the Delaware Courts had jurisdiction to decide Federal questions under the Natural Gas Act which were raised in defense of such a suit. 366 U.S. 664-666.

Thus, the question sought to be presented here does not involve the jurisdiction of the trial court. Rather, the question involves the correctness of the Delaware court's

decision on a Federal question in a case which was clearly within its jurisdiction (pp. 12, 13, Petition for Writ of Certiorari).

This aspect of the case at bar distinguishes it from *Local No. 438* v. *Curry* and *Mercantile National Bank* v. *Langdeau* just as those cases were distinguished from *Gibbons* v. *Ogden, infra.* In explaining this distinction this Court said:

> "The federal question raised by petitioner in the Georgia court, and here, is whether the Georgia courts had power to proceed with and determine this controversy. The issue ripe for review is not whether a Georgia court has erroneously decided a matter of federal law in a case admittedly within its jurisdiction (compare Gibbons v. Ogden (US) 6 Wheat 448, 5 L ed 302) nor is it the question of whether federal or state law governs a case properly before the Georgia courts. Compare Teamsters, C. W. & H. v Lucas Flour Co. 369 US 95, 7 L ed 2d 593, 82 S Ct 571. What we do have here is a judgment of the Georgia court finally and erroneously asserting its jurisdiction to deal with a controversy which is beyond its power and instead is within the exclusive domain of the National Labor Relations Board." (371 U.S. 548.)

This case is not governed by *Local No. 438* v. *Curry* and *Mercantile National Bank* v. *Langdeau*. It is controlled by the cases cited at pages 10-11 of this brief.

The Petition for Writ of Certiorari should be denied for lack of a final judgment or decree.

II.

A state court having jurisdiction over plaintiff's suit based upon claims of right arising under state law also has jurisdiction to pass upon defenses to that suit raising federal questions arising under the Natural Gas Act.

The first question presented for review by Petitioner has been fully answered by this Court in *Pan American Petroleum Corp.* v. *Superior Court*, 366 U.S. 656 (1961).

Petitioner challenges the jurisdiction of the state courts of Delaware to entertain a common-law suit founded in state law because its defense is founded upon federal law. The arguments made by Petitioner in support of its position are precisely the same as those made by petitioners in *Pan American*. The authorities cited by Petitioner here are precisely the same as those cited by petitioners there.

This Court disposed of the question as follows:

> "Petitioners contend that to permit the state courts to entertain the suits brought by Cities Service will jeopardize the uniform system of regulation that Congress established through the Natural Gas Act. Apart from other considerations that dispel such fears, it should be remembered that the route to review by this Court is open to parties aggrieved by adverse state-court decisions of federal questions. In Great Northern R. Co. v. Merchants Elevator Co. 259 US 285, 66 L ed 943, 42 S Ct 477, the question before the Court was whether not merely the state courts but any court had jurisdiction to construe a tariff prior to consideration of the disputed question of construction by the Interstate Commerce Commission. It was argued in that case, as it is argued here, that to permit entry into the courts, without initial resort to the Commis-

sion, would destroy essential uniformity. The answer there given by Mr. Justice Brandeis, speaking for the Court, applies here:

> " 'This argument is unsound. It is true that uniformity is the paramount purpose of the Commerce Act. But it is not true that uniformity in construction of a tariff can be attained only through a preliminary resort to the Commission to settle the construction in dispute. Every question of the construction of a tariff is deemed a question of law; and where the question concerns an interstate tariff it is one of federal law. If the parties properly preserve their rights, a construction given by any court, whether it be federal or state, may ultimately be reviewed by this court either on writ of error or on writ of certiorari; and thereby uniformity in construction may be secured. Hence, the attainment of uniformity does not require that in every case where the construction of a tariff is in dispute, there shall be a preliminary resort to the Commission.' 259 U.S at 290, 291." (366 U.S. 665-666.)

Western suggests no reason why this Court should depart from this long and well-settled principle.

III.

The void Kansas Minimum Price Order did not increase the rate for natural gas sold by the defendant producer to the plaintiff pipeline company for resale in interstate commerce simply because a copy of the void order was deposited with the Federal Power Commission as a part of the defendant producer's rate filing under the Natural Gas Act.

More than nine years have passed since this Court first held that the Order of a state purporting to fix a minimum price to be paid for natural gas sold in inter-

state commerce for resale was void. *Natural Gas Pipeline Co.* v. *Panoma Corp.*, 349 U.S. 444 (1955); *Cities Service Gas Co.* v. *State Corporation Comm'n*, 355 U.S. 391 (1958).

During those nine years many actions of pipeline companies to recover overpayments made under such void orders have been before the courts, both state and federal. All of this litigation has involved an assertion by the producer that the Order, although invalid, was effective to increase its rate because a copy of the Order was filed with the Federal Power Commission as a part of the producer's rate schedule. Without exception, the courts, both state and federal, have in each instance rejected the argument, and in each instance that an attempt was made to seek review by this Court, this Court refused to grant the request.

Typical of these uniform decisions is *Pan American Petroleum Corp.* v. *Kansas-Nebraska Natural Gas Co.*, 297 F.2d 561 (8th Cir. 1962), *cert. denied* 370 U.S. 937 (1962). The Court of Appeals for the Eighth Circuit held:

> "When the Supreme Court of the United States in Cities Service Gas Co. v. State Corporation Commission of Kansas, 1958, 355 U.S. 391, 78 S.Ct. 381, 2 L.Ed.2d 355, held the Kansas 11¢ order unlawful and the Supreme Court of Kansas, in Cities Service Gas Co. v. State Corporation Commission of Kansas, 1959, 184 Kan. 540, 337 P.2d 640, certiorari denied 361 U.S. 836, 80 S.Ct. 89, 4 L.Ed.2d 77, held in accordance with such decision that the Kansas 11¢ order was void *ab initio*, the effect was that the order became a complete nullity. Being a nullity, it could not modify the contract rates between the parties. The effect could only have been to leave the parties where they were

> prior to the unlawful order—in other words, bound by the contract rates to which they had agreed in 1949, 1950 and 1952."

The language is almost verbatim the language of the Court of Appeals for the Third Circuit in *Natural Gas Pipeline Co. of America* v. *F.P.C.*, 253 F.2d 3, 7 (1958), *cert. denied sub nom. Dorchester Corp.* v. *Natural Gas Pipeline Co.*, 357 U.S. 927 (1958), and of the Court of Appeals for the Tenth Circuit in *Cities Service Gas Co.* v. *F.P.C.*, 255 F.2d 860, 865 (1958), *cert. denied sub nom. Magnolia Petroleum Co.* v. *Cities Service Gas Co.*, 358 U.S. 837 (1958). Cf. *Natural Gas Pipeline Co. of America* v. *Harrington*, 246 F.2d 915 (5th Cir. 1957), *cert. denied* 356 U.S. 957 (1958).

The Delaware decision is also in accord with the decisions of the United States District Court for the Northern District of Oklahoma in *Cities Service Gas Co.* v. *United Producing Co.*, 212 F.Supp. 116 (1960), and the decision of the United States District Court for Kansas in *Northern Natural Gas Co.* v. *Landon*, 212 F.Supp. 856 (1961). The Delaware decision follows the Court's earlier expressions to the same effect in *Columbian Fuel Corporation* v. *Superior Court*, 158 A.2d 478 (1960).

Western argues that its case is somehow different from all of the other cases in that the Federal Power Commission determined its rates in a proceeding under Section 5(a) of the Natural Gas Act. The language of the Commission's Order itself disposes of that argument. The Commission said that its Order was *not* a "determination as to what the effective legal rates are or have been for jurisdictional sales by Western" (A182).

It is respectfully submitted that there is no occasion for this Court to review on certiorari the decision of the Delaware Supreme Court which is in accord with and supported by every adjudication of every court which has passed upon the question.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

CONRAD C. MOUNT
DANIEL R. HOPKINS
CHARLES V. WHEELER
First National Building
Oklahoma City, Oklahoma 73101

Attorneys for Respondent,
Cities Service Gas Company

Of Counsel:

HOWARD L. WILLIAMS
MORRIS, JAMES, HITCHENS & WILLIAMS
701 Bank of Delaware Building
Wilmington, Delaware 19801
HARRY S. LITTMAN
MELVIN RICHTER
317 Wyatt Building
Washington, D. C. 20005

September, 1964

APPENDIX

APPENDIX

28 U.S.C. § 1257. State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity.

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.